

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

Richard Millican,)	
)	
Plaintiff,)	
)	
v.)	No.: 2:12-cv-02019-STA-cgc
)	
One Beacon America Insurance Co. and)	
Barr-Nunn Transportation, Inc.,)	
)	
Defendants.)	

AMEND COMPLAINT

Comes the Plaintiff, Richard Millican, and sues the Defendants, OneBeacon America Insurance Co. and Barr-Nunn Transportation, Inc., for compensatory damages and punitive damages in the total amount of Seventy Four Thousand Dollars (\$74,000.00), and for other relief, and for cause of action, alleges as follows:

1. That the Plaintiff is a resident of Shelby County, Tennessee, and is over 18 years of age and competent; that Defendant OneBeacon America Insurance Co. is located at OneBeacon Lane, Canton, MA 02021 and engages in the business of insurance and issues occupational accident policies within the State of Tennessee; that Defendant, Barr-Nunn Transportation, Inc. engages in business within the State of Tennessee and is the policyholder of occupational accident insurance policy No. 216-000-321, issued by OneBeacon America Insurance Co., and is named as a nominal defendant herein.

2. That the Plaintiff, Richard Millican, was employed as a contract truck driver for Barr-Nunn Transportation, Inc., the insured entity, during all relevant periods and is an “eligible person” (as defined in the policy) of the policyholder/employer, Barr-Nunn Transportation, Inc., and is a third-party beneficiary of the above referred occupational accident policy.

3. That on March 30, 2011 the Plaintiff, Richard Millican, while operating a tractor-trailer truck owned by Barr-Nunn Transportation, Inc., within the course and scope of his employment, on Interstate 40 near Jackson, Tennessee struck a depression or pothole in the road with sufficient force to cause his head to strike a window or other fixed object resulting in injuries to his neck, back, and other areas of his body, and causing his arm and hand to become numb and painful.

4. That Plaintiff sought medical treatment at Methodist North Hospital emergency room and at Hernando Family Practice for his accident related injuries and was thereafter diagnosed by an MRI of the cervical spine which verified the existence of a large left paracentral disk protrusion with superior extrusion at the C7-T1 level. Plaintiff was referred to Dr. W. Craig Clark, a neurosurgeon, and underwent a microdisectomy of the C7-T1 on May 31, 2011 at Baptist Hospital Desoto for treatment of the above referred injury.

5. That as a result of the above occupational accident, the Plaintiff was temporarily totally disabled from the period of March 30, 2011 through August 1, 2011 and is therefore entitled to be paid 75% of his gross income (as defined by the policy) and has suffered permanent injuries which have resulted in a permanent partial impairment to his body as a whole.

6. That as a result of the above referred occupational accident, the Plaintiff suffered injuries which necessitated extensive and costly medical treatment which are directly related and has incurred medical expenses for which he should be reimbursed or which should be paid on his behalf to various medical providers, pursuant to the policy, including, but not limited to, hospital services, physician services, medication expenses, test-related expenses, expenses which relate to physical therapy and work hardening, and other medically related expenses which are covered by the applicable occupational accident policy.

7. That the Plaintiff has made repeated requests and demands to be granted the benefits under the hereinabove referred policy which have been ignored and refused by the Defendants, and that no amounts have been paid to Plaintiff or on his behalf to date and that such failure to extend benefits or honor the policy by paying for Plaintiff's medical treatment and for his lost income are allegedly material breaches of said policy for which the Defendants should be held liable.

8. That the hereinabove refusal to honor and abide by the terms of this policy, despite prior demands by the Plaintiff, amounts to bad faith and that the Defendants should be penalized pursuant to statute or by an award of punitive damages based upon its deliberate and intentional refusal to extend benefits or honor the occupational accident policy, and based upon its refusal to provide the Plaintiff with an explanation for its denial of coverage and refusal to grant benefits despite numerous requests for such information, and despite the Plaintiff's full cooperation with the Defendants' investigation, including providing the Defendants with medical reports and records to verify the nature and extent of his injuries.

9. Pursuant to the provisions of T.C.A. § 24-5-113, the Plaintiff, Richard Millican, hereby itemizes the following medical bills and expenses incurred by him for treatment of his accident related injuries which are also attached hereto, to wit:

<u>PROVIDER</u>	<u>DATES</u>	<u>AMOUNT</u>
Methodist North	04/05/11	\$ 1,237.20
T.M. Carr, MD	04/05/11	\$ 250.00
Hernando Family Medical Clinic	04/08-04/25/11	\$ 303.00
Desoto Imaging Specialists	05/03/11	\$ 1,702.00
Dr. W. Craig Clark/Neurosurgical Center	05/25-08/01/11	\$ 3,642.00
Baptist Hospital Desoto	05/31-06/01/11	\$13,485.58
Prescriptions	various	\$ _____
Total		\$20,619.78

WHEREFORE, Plaintiff, Richard Millican, sues the Defendants, OneBeacon America Insurance Co. and Barr-Nunn Transportation, Inc., for compensatory damages of Sixty Four

Thousand Dollars (\$64,000.00) and punitive damages of Ten Thousand Dollars (\$10,000.00), in the total amount of Seventy Four Thousand Dollars (\$74,000.00), and for attorney fees and for bad faith penalty of 25% of the total losses, and for such other relief as may be appropriate, including all benefits available under the occupational accident policy sued for hereunder, including temporary total benefits, and all medical benefits and other reimbursements, and the issuance of a mandatory injunction compelling Defendant, OneBeacon America Insurance Company to immediately pay Plaintiff's medical expenses and his lost income.

Respectfully submitted,

/s/ Andrew E. Bender
Andrew E. Bender (#5916)
Attorney for Plaintiff
382 Washington Avenue
Memphis, Tennessee 38105
(901) 526-1568

CERTIFICATE OF SERVICE

I certify on this date, namely March 1, 2012, that I have mailed a copy of the foregoing Motion to:

John Thomas Feeney
Attorney for Defendant
424 Church Street, Suite 2230
Nashville, TN 37219

/s/ Andrew E. Bender